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HOUSE BILL 289

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO STATE AGENCIES; PROVIDING FOR THE ALCOHOL AND
GAMING DIVISION OF THE REGULATION AND LICENSING DEPARTMENT;
MAKING THE DIRECTOR OF THE DIVISION A COVERED EMPLOYEE UNDER
THE PROVISIONS OF THE PERSONNEL ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 9-16-4 NMSA 1978 (being Laws 1983,
Chapter 297, Section 20, as amended) is amended to read:

"9-16-4. DEPARTMENT ESTABLISHED.--There is created in
the executive branch the "regulation and licensing
department". The department shall not be a cabinet
department. The department shall consist of but not be
limited to [~~five~~] six divisions as follows:

- A. the administrative services division;
- B. the construction industries division;

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- 1 C. the financial institutions division;
- 2 D. the securities division; [~~and~~]
- 3 E. the manufactured housing division; and
- 4 F. the alcohol and gaming division. "

5 Section 2. Section 9-16-7 NMSA 1978 (being Laws 1983,
6 Chapter 297, Section 23) is amended to read:

7 "9-16-7. DIVISION DIRECTORS. --The superintendent shall
8 appoint, with the approval of the governor, "directors" of the
9 divisions established within the department. The positions so
10 appointed are exempt from the Personnel Act, except for the
11 director of the alcohol and gaming division, who shall be
12 covered by the provisions of that act. "

13 Section 3. Section 10-9-4 NMSA 1978 (being Laws 1961,
14 Chapter 240, Section 4, as amended) is amended to read:

15 "10-9-4. COVERAGE OF SERVICE. --The Personnel Act and the
16 service cover all state positions except:

17 A. officials elected by popular vote or appointed
18 to fill vacancies to elective offices;

19 B. members of boards and commissions and heads of
20 agencies appointed by the governor;

21 C. heads of agencies appointed by boards or
22 commi ssi ons;

23 D. directors of department divisions, except as
24 specifically provided otherwise by law;

25 E. those in educational institutions and in public

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1 schools;

2 F. those employed by state institutions and by
3 state agencies providing educational programs and who are
4 required to hold valid certificates as certified school
5 instructors as defined in Section 22-1-2 NMSA 1978 issued by
6 the state board of education;

7 G. those in the governor's office;

8 H. those in the state militia or the commissioned
9 officers of the New Mexico state police division of the
10 department of public safety;

11 I. those in the judicial branch of government;

12 J. those in the legislative branch of government;

13 K. not more than two assistants and one secretary
14 in the office of each official listed in Subsections A, B and
15 C of this section, excluding members of boards and commissions
16 in Subsection B of this section;

17 L. those of a professional or scientific nature
18 which are temporary in nature;

19 M. those filled by patients or inmates in
20 charitable, penal or correctional institutions;

21 N. state employees if the personnel board in its
22 discretion decides that the position is one of policymaking;
23 and

24 O. disadvantaged youth under twenty-two years of
25 age regularly enrolled or to be enrolled in a secondary

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1 educational institution approved by the state board of
2 education or in an accredited state institution of advanced
3 learning or vocational training and who are to be employed for
4 not more than seven hundred twenty hours during any calendar
5 year:

6 (1) the term "disadvantaged youth" shall be
7 defined for purposes of this exemption by regulation duly
8 promulgated by the board; and

9 (2) the board shall:

10 (a) require that all the criteria of
11 this subsection have been met;

12 (b) establish employment lists for the
13 certification of the highest-standing candidates to the
14 prospective employers; and

15 (c) establish the pay rates for such
16 employees. "

17 Section 4. Section 60-3A-3 NMSA 1978 (being Laws 1981,
18 Chapter 39, Section 3, as amended) is amended to read:

19 "60-3A-3. DEFINITIONS. --As used in the Liquor Control
20 Act:

21 A. "alcoholic beverages" means distilled or
22 rectified spirits, potable alcohol, brandy, whiskey, rum, gin
23 and aromatic bitters bearing the federal internal revenue
24 strip stamps or any similar alcoholic beverage, including
25 blended or fermented beverages, dilutions or mixtures of one

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1 or more of the foregoing containing more than one-half of one
2 percent alcohol, but excluding medicinal bitters;

3 B. "beer" means any alcoholic beverage obtained by
4 the fermentation of any infusion or decoction of barley, malt
5 and hops or other cereals in water, and includes porter, beer,
6 ale and stout;

7 C. "brewer" means any person who owns or operates
8 a business for the manufacture of beer;

9 D. "club" means:

10 (1) any nonprofit group, including an
11 auxiliary or subsidiary group, organized and operated [~~under~~
12 pursuant to the laws of this state with a membership of not
13 less than fifty members who pay membership dues at the rate of
14 not less than five dollars (\$5.00) per year and who, [~~under~~
15 pursuant to the constitution and bylaws of the club, have all
16 voting rights and full membership privileges and which group
17 is the owner, lessee or occupant of premises used exclusively
18 for club purposes and which group the director finds:

19 (a) is operated solely for recreation,
20 social, patriotic, political, benevolent or athletic purposes;
21 and

22 (b) the proposed licensee has been
23 granted an exemption by the United States from the payment of
24 the federal income tax as a club [~~under~~ pursuant to the
25 provisions of Section 501(a) of the Internal Revenue Code of

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1 1986, as amended, or if the applicant has not operated as a
2 club for a sufficient time to be eligible for the income tax
3 exemption, it must execute and file with the director a sworn
4 letter of intent declaring that it will, in good faith, apply
5 for such exemption as soon as it is eligible; or

6 (2) an airline passenger membership club
7 operated by an air common carrier [~~which~~] that maintains or
8 operates a clubroom at an international airport terminal. For
9 the purposes of this paragraph, "air common carrier" means a
10 person engaged in regularly scheduled air transportation
11 between fixed termini under a certificate of public
12 convenience and necessity issued by the civil aeronautics
13 board;

14 E. "commission" means the secretary of public
15 safety when the term is used in reference to the enforcement
16 and investigatory provisions of the Liquor Control Act and
17 means the [~~superintendent~~] director of the alcohol and gaming
18 division of the regulation and licensing department when the
19 term is used in reference to the licensing provisions of the
20 Liquor Control Act;

21 F. "department" means the special investigations
22 division of the department of public safety when the term is
23 used in reference to the enforcement and investigatory
24 provisions of the Liquor Control Act and means the
25 [~~superintendent~~] alcohol and gaming division of the regulation

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1 and licensing department when the term is used in reference to
2 the licensing provisions of the Liquor Control Act;

3 G. "director" means the director of the special
4 investigations division of the department of public safety
5 when the term is used in reference to the enforcement and
6 investigatory provisions of the Liquor Control Act and means
7 the [~~superintendent~~] director of the alcohol and gaming
8 division of the regulation and licensing department when the
9 term is used in reference to the licensing provisions of the
10 Liquor Control Act;

11 H. "dispenser" means any person licensed [~~under~~]
12 pursuant to the provisions of the Liquor Control Act selling,
13 offering for sale or having in his possession with the intent
14 to sell alcoholic beverages both by the drink for consumption
15 on the licensed premises and in unbroken packages for
16 consumption and not for resale off the licensed premises;

17 I. "distiller" means any person engaged in
18 manufacturing spirituous liquors;

19 J. "governing body" means the board of county
20 commissioners of a county or the city council or city
21 commissioners of a municipality;

22 K. "hotel" means any establishment or complex
23 having a resident of New Mexico as a proprietor or manager and
24 where, in consideration of payment, meals and lodging are
25 regularly furnished to the general public. The establishment

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1 or complex must maintain for the use of its guests a minimum
2 of twenty-five sleeping rooms;

3 L. "licensed premises" means the contiguous areas
4 or areas connected by indoor passageways of a structure and
5 the outside dining, recreation and lounge areas of the
6 structure [~~which~~] that are under the direct control of the
7 licensee and from which the licensee is authorized to sell,
8 serve or allow the consumption of alcoholic beverages under
9 the provisions of its license; provided that in the case of a
10 restaurant, hotel or racetrack, "licensed premises" includes
11 all public and private rooms, facilities and areas in which
12 alcoholic beverages are sold or served in the customary
13 operating procedures of the restaurant, hotel or racetrack;

14 M "local option district" means any county
15 [~~which~~] that has voted to approve the sale, serving or public
16 consumption of alcoholic beverages, or any incorporated
17 municipality [~~which~~] that falls within a county [~~which~~] that
18 has voted to approve the sale, serving or public consumption
19 of alcoholic beverages, or any incorporated municipality of
20 over five thousand population which has independently voted to
21 approve the sale, serving or public consumption of alcoholic
22 beverages under the terms of the Liquor Control Act or any
23 former act;

24 N. "manufacturer" means a distiller, rectifier,
25 brewer or winer;

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1 O. "minor" means any person under twenty-one years
2 of age;

3 P. "package" means any immediate container of
4 alcoholic beverages [~~which~~] that is filled or packed by a
5 manufacturer or wine bottler for sale by the manufacturer or
6 wine bottler to wholesalers;

7 Q. "person" means an individual, corporation,
8 firm, partnership, copartnership, association or other legal
9 entity;

10 R. "rectifier" means any person who blends, mixes
11 or distills alcohol with other liquids or substances for the
12 purpose of making an alcoholic beverage for the purpose of
13 sale other than to the consumer by the drink, and includes all
14 bottlers of spirituous liquors;

15 S. "restaurant" means any establishment having a
16 New Mexico resident as a proprietor or manager [~~which~~] that is
17 held out to the public as a place where meals are prepared and
18 served primarily for on-premises consumption to the general
19 public in consideration of payment and [~~which~~] has a dining
20 room, a kitchen and the employees necessary for preparing,
21 cooking and serving meals; provided that "restaurant" does not
22 include establishments as defined in regulations promulgated
23 by the director serving only hamburgers, sandwiches, salads
24 and other fast foods;

25 T. "retailer" means any person licensed [~~under~~]

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1 pursuant to the provisions of the Liquor Control Act selling,
2 offering for sale or having in his possession with the intent
3 to sell any alcoholic beverages in unbroken packages for
4 consumption and not for resale off the licensed premises;

5 U. "spirituous liquors" means alcoholic beverages
6 as defined in Subsection A of this section except fermented
7 beverages such as wine, beer and ale;

8 V. "wholesaler" means any person whose place of
9 business is located in New Mexico and who sells, offers for
10 sale or possesses for the purpose of sale any alcoholic
11 beverages for resale by the purchaser;

12 W. "wine" includes the words "fruit juices" and
13 means alcoholic beverages obtained by the fermentation of the
14 natural sugar contained in fruit or other agricultural
15 products, with or without the addition of sugar or other
16 products, which do not contain less than one-half of one
17 percent nor more than twenty-one percent alcohol by volume;

18 X. "wine bottler" means any New Mexico wholesaler
19 who is licensed to sell wine at wholesale for resale only and
20 who buys wine in bulk and bottles it for wholesale resale;

21 Y. "winemaker" means any person who owns or
22 operates a business for the manufacture of wine; and

23 Z. "winer" means a winemaker. "